UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JOHN AKINWUSI,

                                           Case No. 12-12963

         Plaintiff,

                                           Honorable John Corbett O'Meara

v.

BANK OF AMERICA, N.A.,

         Defendant.

_____/

ORDER GRANTING DEFENDANT'S MOTION TO DISMISS

This matter came before the court on defendant Bank of America's August 31, 2012 motion to dismiss. Plaintiff John Akinwusi failed to file a response; therefore, the court will decide the motion without the benefit of oral argument.

After plaintiff Akinwusi defaulted on a mortgage loan, defendant Bank of America, N.A. ("BANA") initiated foreclosure proceedings that culminated in a sheriff's sale January 17, 2012. The redemption period expired six months later, July 17, 2012. Plaintiff filed suit in the Circuit Court for the County of Oakland, and BANA timely removed the action to this court.

The court finds that Count I, in which Plaintiff alleges that BANA was obligated to modify his loan agreement, is barred by the statute of frauds. See Mich. Comp. Laws Ann. § 566.132(2). The court will dismiss Count II, which purports to allege a claim for unjust enrichment, because the parties' relationship is governed by an express contract. See Belle Isle Grill Corp. v. Detroit, 256 Mich. App. 463 (2003). Count III, a claim for breach of implied agreement, is also barred by the statute of frauds. Count IV, which alleges violations of the foreclosure statute, is without merit, as

BANA has no duty under the Home Affordable Modification Program to provide Plaintiff with a

loan modification.

For all these reasons, it is hereby **ORDERED** that defendant Bank of America's August 31,

2012 motion to dismiss is **GRANTED.**

                                        s/John Corbett O'Meara
                                        United States District Judge

Date: October 23, 2012

I hereby certify that a copy of the foregoing document was served upon the parties of record
on this date, October 23, 2012, using the ECF system and/or ordinary mail.

                                        s/William Barkholz
                                        Case Manager